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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/566,809	08/21/2006	Marc Theisen	10191/4082	9005
26646 7590 02/20/2009 KENYON & KENYON LLP ONE BROADWAY NEW YORK, NY 10004				
EXAMINER BLOUNT, ERIC				
ART UNIT 2612		PAPER NUMBER		
MAIL DATE 02/20/2009		DELIVERY MODE PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/566,809

Applicant(s)

THEISEN, MARC

Examiner

ERIC M. BLOUNT

Art Unit

2612

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 November 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date: _____

DETAILED ACTION

Status of the Claims

1. Claims 10-29 are currently pending in the instant invention. Claim 9 has been cancelled. Claims 17-29 are new.

Response to Arguments

2. Applicant's arguments, see amendment, filed on November 25, 2008, with respect to the rejections of claims under 35 USC 102(e) and 103(a) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Fendt [US 6,271,747 B1].

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 12, 14-16, 18, and 29 are rejected under 35 U.S.C. 102(a) as being unpatentable over Ishizaki et al [US 6,516,278 B1] in view of Eisele et al [US 6,678,599 B2].

With regard to **claim 12**, Ishizaki discloses a device for activating an actuator system for protecting a pedestrian, the device being connected to an environment sensor system and a contact sensor system, the device comprising:

- An arrangement for performing a first comparison of a first signal from the contact sensor system to a threshold (column 2, lines 15-33 and column 6, lines 45-52); and
- An arrangement for changing one of the threshold and the first signal as a function of a second signal of the environment sensor system, the actuator system being activated as a function of the comparing (column 2, lines 15-33; column 6, lines 7-19; and column 6, lines 60-65).

Ishizaki does not specifically disclose an arrangement for comparing the first signal to a noise threshold and determining a starting point. In an analogous art, Eisele discloses a system wherein a signal is compared to a noise threshold to ascertain a starting point for a comparison (column 1, lines 37-61). The device also includes a noise sensor (column 1, lines 58-67). The noise sensor signal is viewed as a signal for determining a starting point of the first comparison. Since both inventions disclose impact detecting systems, it would have been obvious to one having ordinary skill in the art to modify the invention of Ishizaki to include a means for adjusting the threshold for noise as taught by Eisele, in order to yield the predictable result of a system capable of more accurately determining impact with a vehicle and protecting a pedestrian by accounting for spurious noises that may adversely affect sensor readings.

Regarding **claim 14**, the claim is interpreted and rejected using the same reasoning as claim 12 above.

As for **claim 15**, Ishizaki discloses an arrangement for integrating the first signal comparison at least once (column 2, lines 16-23). Eisele also discloses integration (column 2, lines 5-23).

As for **claims 16 and 18**, the first signal itself is used for comparison (Ishizaki, column 2, lines 15-33).

Claim 29 is interpreted and rejected using the same reasoning as claim 12 above.

6. Claims 10, 11, 13, 17, and 19-28 are rejected under 35 U.S.C. 102(a) as being unpatentable over Ishizaki et al [US 6,516,278 B1] in view of Eisele et al [US 6,678,599 B2] and in further view of Fendt [US 6,271,747 B1].

Claim 13 is interpreted and rejected using similar reasoning as claim 12 above. Neither Ishizaki nor Eisele specifically disclose an arrangement for changing a threshold as a function of time. In an analogous art, Fendt discloses a device for actuating a vehicle safety system, wherein a threshold is changed as a function of time. Having each reference on hand, it would have been obvious to one possessing ordinary skill in the art to try the time dependent threshold adjustment taught by Fendt in the invention of Ishizaki as modified Eisele in order to yield the predictable results of a vehicle safety system operable to provide safety measures at the appropriate time.

As for **claim 10**, Ishizaki does not specifically disclose that the first signal is compared to a noise threshold. In an analogous art, Eisele discloses a system wherein a signal is compared to a noise threshold to ascertain a starting point for a comparison (column 1, lines 37-61). Since

both inventions disclose impact detecting systems, it would have been obvious to one having ordinary skill in the art to modify the invention of Ishizaki to include a means for adjusting the invention for noise as taught by Eisele, in order to yield the predictable result of a system capable of more accurately determining impact with a vehicle and protecting a pedestrian by accounting for spurious noises that may adversely affect sensor readings.

As for **claim 11**, the second signal includes a relative speed (Ishizaki, column 6, lines 7-19).

Claim 17 is interpreted and rejected using the same reasoning as claim 15 above.

Claim 19 is interpreted and rejected using the same reasoning as claim 16 above.

Claim 20 is interpreted and rejected using the same reasoning as claim 15 above.

Claims 21-23 are interpreted and rejected using the same reasoning as claim 16 above.

Claim 24 is interpreted and rejected using the same reasoning as claim 20 above.

Claim 25 is interpreted and rejected using the same reasoning as claim 16 above.

Claim 26 is interpreted and rejected using the same reasoning as claim 11 above.

Claim 27 is interpreted and rejected using the same reasoning as claim 15 above.

Claim 28 is interpreted and rejected using the same reasoning as claim 16 above.

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to ERIC M. BLOUNT whose telephone number is (571)272-2973. The examiner can normally be reached on Monday-Thursday 8:00 am - 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Benjamin C. Lee can be reached on (571) 272-2963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Eric M. Blount
Examiner
Art Unit 2612

/Eric M. Blount/
Examiner, Art Unit 2612